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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-5830

WILLIAM PAT POINTON, PATRICIA POINTON, APPELLANTS

v.

FIDELITY NATIONAL BANK, N.A. APPELLEE.

Supreme Court, U.S.
FILED
NOV 21 1983
Alexander L. Stevas, Clerk

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

JURISDICTIONAL STATEMENT

William Pat Pointon
Patricia Ann Pointon
901 S. Anderson Rd.
Choctaw, Oklahoma 73020

PRO SE

November 27, 1983

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. _____

WILLIAM PAT POINTON, PATRICIA ANN POINTON, APPELLANTS

v.

FIDELITY NATIONAL BANK, N.A. APPELLEE.

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS, TENTH CIRCUIT

JURISDICTIONAL STATEMENT

William Pat Pointon and Patricia Ann Pointon appellants, appeal from the final judgment of the United States Court of Appeals, Tenth Circuit, dated August 29, 1983, holding that the District Court remanded this case on grounds enumerated in 28 U.S.C. § 1447 (c) as applied to this case is in error and appellant's alternate removal basis 28 U.S.C. 1443 is without substance.

The denying of both of Appellants' removal basis are not constitutional and violate the due process and equal protection of the law clauses of the Fifth and the Fourteenth Amendments to the United States Constitution.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Tenth Circuit, and the United States District Court, which appear in the appendix.

JURISDICTION

The judgment of the United States Court of Appeals, Tenth Circuit was entered August 29, 1983, see appendix page 1, and affirmed the judgment of the United States District Court for the Western District of Oklahoma which was entered February 28, 1983, remanding this case which is a removal case from State Court to Federal Court.

A supplemental notice of Appeal to this Court was duly filed in the Oklahoma County District Court on November 9, 1983.

This Appeal is being docketed in this Court within 90 days from judgment of the Appeals Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2).

QUESTION PRESENTED

Whether remand order of the United States District Court for the Western District of Oklahoma and affirmed by the United States Court of Appeals was violative to the due process and equal protection of the laws of the Fifth and Fourteenth Amendments to the United States Constitution.

Whether the said United States District Court and the said Appeals Court abused their descretion and therefore violated defendants' civil rights Under 42 U.S.C. 1983.

Whether the said United States District Court and the said Appeals Court remanded and affirmed, respectfully, a case which had not been improvidently removed, abused their descretion and therefore violated the due process and equal protection of the laws of the Fifth and Fourteenth Amendments.

CONSTITUTIONAL PROVISIONS AND RULES

Fifth Amendment, United States Constitution:

" • • • nor be deprived of life, liberty, or property, without due process of law; • • • "

Fourteen Amendment, United States Constitution:

"Section 1." • • nor shall any state deprive any person of life, liberty, or property, without due process os law; nor deny to any person within its jurisdiction the equal protection of the laws."

Seventh Amendment, United States Constitution:

" • • • where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, • • • "

In the case at bar remanded back to state Court the County District Court has denied Appellants a jury trial, after same was demanded in their counterclaim. See appendix page 3.

RAISING THE FEDERAL QUESTION

At the earliest stage of the appeals Court, Appellant raised the claim that to deny a timely proper removal where the instant case was not moved improvidently or where subject matter jurisdiction exists, remand was inappropriate, and the federal trial court had no jurisdiction to enter a remand order under the circumstances.

On February 28, 1983, the District Court erred and issu ed an Order of Remand, however, said Order did not state, "removed improvidently and without jurisdiction," which left the case open for review by the Appeals Court.

The remand order by the trial court and affirmed by the Appeals Court is repugnant and violative to Appellants due process and equal protection of the laws.

Appellants alternately based removal pursuant to 28 U.S.C. 1443. Appellee Fidelity Bank at all times was acting under color of State Law as the State agent by powers ceded to it by the Oklahoma Uniform Commercial Credit Code.

Appellants did not execute a valid waiver of their Constitutional rights as debtors in the Promissory Note sued on. See Fuentes v. Shevin, 407 U.S. 67, 80 92, S.Ct. 1983, 32 L. Ed 2d 556.

Regulation Z (Truth in Lending Act), 12 C.F.R. § 226.7 (d) in the case at bar, where federal law has pre-empted the field, shows the federal question of jurisdiction to be clear. Both the District Court and the Appeals Court failed to exercise the Court's Pendant Jurisdiction althought same was in Appellants' Answer and counterclaim and the subsequent brief to the Appeals Court.

STATEMENT OF THE CASE

Appellee is a National Banking Association, chartered by the United States Government with its principal place of business being in Oklahoma City, Oklahoma.

William Pat Pointon and Patricia Ann Pointon, formerely

homebuilders, borrowed $90,000.00 from Appellee bank on April 10, 1979, "Initial interest rate was 13.75% plus FID Bank Prime 1½%." Since this date the original note has been subsequently renewed, enlarged, modified, with interest added to principal and interest added to interest with interest rising to a height of 24% per annum. At all time the chain of notes or note was secured by the same property. Case law treats such a chain of notes as one and the same note. Appellee bank took more interest then the law allows.

Thus far Appellee bank has refused to answer interrogatories filed March 28, 1983, a copy as shown in the appendix as page 4.

Appellee bank has committed usury in connection with this note sued on which is in violation of 12 U.S.C. § 85 and § 86.

Appellants did not execute a valid waiver of their constitutional rights as debtors in the Promissory Note sued on.

Because of undue local influence in a conpanion case Appellants filed this removal Petition in the United States District Court on December 30, 1982. Removal was within the 30 day time limit.

On January 4, 1983, and timely, defendants filed their Answer and Counterclaim in the Federal District Court under 28 U. S. C. A. 1355, 1337, and 1343; 42 U.S.C.A. 1983 and 1985; Regulation Z (Truth in Lending Act), 1980 Monetary Control Act; Title 15 U.S.C. A. (Anti Trust); 12 U. S.C.A § 85 and § 86; and the doctrines of pendant and ancillary jurisdiction.

On February 28, the District Court erred and issued an Order of Remand, however, said Order did not state, "removed improvidently and without jurisdiction," which left this case open for review to the Appeals Court and the United States Supreme Court.

On March 8, 1983, Appellants filed their "Notice of Appeal" for review of the District Court's Order.

On August 29, 1983, the United States Court of Appeals entered judgment, see appendix page 1, affirming the District Court's judgment. See appendix page 2.

THE QUESTION IS SUBSTANTIAL

The question as to the violation of Appellants' due process and equal protection of the laws of the Fifth and Fourteenth Amendments and the denial of a trial by jury are substantial to the instant case.

Appellants Petition was properly removed to the United States District Court. The Court erred in its Remand Order. In:

> Ferri v. Bell, 671 F. 2d 796 (1982), the Supreme Court reversed, ruling that a case may be remanded to State Court on grounds permitted by 28 U.S.C. § 1447 (c): When the case was removed 'improvidently and without jurisdiction' within the meaning of the statute. "I.D. at 344, 96 S.Ct. at 589. "Where a case has not been moved improvidently or where subject matter jurisdiction exists, remand is inappropriate and a federal trial court has no jurisdiction to enter a remand order." (Emphasis added).

The remand Order of the District Court in the case at bar states only: that the court lacked jurisdiction.

In the body of the Order the Court states: " • • • that the matter is not removable under 28 U.S.C. § 1331 as there is no federal claim asserted by the plaintiff or under 28 U.S.C. § 1332 • • • " the case at bar was not removed under either of the two aforemention statutes, this is an error, but they were removed under 28 U.S.C. § 1335, and § 1337, 12 U.S.C. § 85 and § 86, Regulation Z. (12 CFR Truth in Lending) Federal law of Contracts, 28 § 1441, § 1443 and 1446. The Order further states: " • • • the right of removal is limited by the principle that defendants may remove only on the basis of the claims brought against them • • •" Plaintiff's petition brings a claim against defendant of principal and interest. The principal is the end result of several notes renewed with interest having been paid on previous notes both by monies and interest added to the principal. The interest stated in the petition

has accrued from the previous payment of interest. The Plaintiff has comitted usury and "previously" collected more interest then the law allows under the Uniform Commercial Credit Code permits, and other basis setting interest rates for this particular loan, thereby, "taking" excessive usurious interest without due process of law and in direct violation of defendant's constitutional rights granted to them by the Fourteenth Amendment; And, also, the plaintiff and the state courts have consistently refused to adjudicate this matter of usury, thereby denying Appellants equal protection of the laws, in further violation of the Fourteenth Amendment. Appellee has never disclosed the legal basis that they use to calculate the interest charged in the instant case.

In the case of Thermtron Products v. Hermansdorfer, U. S. District Judge, 423 U.S. 366 (1966 6th Cir.):

> "• • • the District Judge, • • • ordered the case remanded to the state court for trial, soley on the ground that his heavy docket would unjustly delay the plaintiffs from going to trial on the merits. Petitioners then filed in the Court of Appeals an alternative petition for a writ of mandamus or prohibition on the ground that the action had been properly removed and that respondent lacked authority to remand the case on the ground that he had asserted. The Court of Appeals denied the petition • • • "

Next, petitioners obtained certiorari to the United States Court of Appeals for the Sixth Circuit.

In the case at bar, Section 1447 (c) was not even mentioned in the remand Order.

> " • • • But an otherwise properly removed action may no more be remanded because the district court considers itself to busy to try it than an action properly filed in the federal court in the first instance may be dismissed or referred to state courts for such reason. • • • We agree with petitioners: The District Court exceeded its authority in remanding on grounds not permitted by controlling statutes."

Similiarily and to paraphase Thermtron, the District Court in the instant case:

> " • • • did not mention § 1447 (c), did not suggest that the District Court proceeded under that section, properly or improperly, and did

> not itself suggest that this case was not removable under § 1441 or that it had been improvidently removed from the state court for want of jurisdiction or otherwise."

The District Court acted solely on the ground that under § 1447 (d) it had no jurisdiction. The Court further states:

> " • • • But we are not convinced that congress ever intended to extend carte blanche authority to the district courts to reverse the federal statutes governing removal by remanding cases on grounds that seem justifiable to them but are not recognized by the controlling statutes. • • • the District judge remanded a properly removed case on grounds that he had no authority to consider, he exceeded his statutorily defined power;"

The case at bar closely parallels the Thermtron Case. A reasonable assupmtion would be that the District Court remanded this case for similiar reasons as did the District Court in the Thermtron Case.

Appellee bank has powers ceded to it by the State of Oklahoma under the Oklahoma Uniform Commercial Credit Code, thereby making it an agency of the State and subjecting it to a state agency operating under color of state law. In the civil rights case: Monell v. New York City Dept. of Social Services, (1978 Cert. U.S. Ct. of App. 2nd Dist.):

> " • • • the states did deny to citizens the equal protection of the laws • • • they took property with out just compensation and he had no remedy.

Conversely so, the Appellee bank took property (usurious interest) as a banking corporation and as an agency of the state.

In Atkins v. United States, (Ct. CL 556 F. 2d 1028) the court said:

> "Refusal of court to hear and decide case before it when there are no other courts competent to hear such case could amount to denial of due process under the Fourteenth Amendment."

Previously in several companion cases to the instant case, the county District Court permited a motion by Appellee bank: that trial be placed on a non-jury docket and over the objections of defendants. In each case defendant had counterclaimed and demanded a trial by jury. Next, summary judgment issued without the court adjudicating any of the

defendant's allegations, completely denying a trial by jury, due process and equal protection of the laws.

In sum, In the matter of Gibbs v. Housing Authority, Bankruptcy No. 5-80-00330, adv. No. 2-80-0316 United States Bankruptcy Court. D. Conn. (1981):

> " It is now well settled that a state statute or constitution that , on its face, deprives a defendant of his civil rights provides a solid basis for removal to Federal Court. * * * to now extend the right to remove to members of minority groups who show that their defense in pending litigation is affected by local prejudice, or by systematic exclusion from juries, or for any reason involving the unconstitutional application of state laws."

CONCLUSION

For these reasons this Court should note jurisdiction of this Appeal.

Respectfully submitted,

Wm. Pat Pointon

Patricia Ann Pointon

Patricia Ann Pointon

901 S. Anderson Rd.
Choctaw, Oklahoma 73020
(405) 769-6198

PRO SE

CERTIFICATE OF MAILING

This is to certify that on the 27th day of November, 1983, We mailed a true and correct copy of the above and foregoing to: Roland Tague, attorney for appellee, 901 Fidelity Plaza, Fidelity Bank Building, Oklahoma City, Oklahoma.

Wm. Pat Pointon

Patricia Ann Pointon

Patricia Ann Pointon

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

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SUPREME COURT, U.S.

WILLIAM PAT POINTON and PATRICIA ANN POINTON, Petitioners	U. S. Supreme Court No. _____
v.	U. S. Court of Appeals No. 83-1353
FIDELITY BANK, NATIONAL ASSOCIATION, Respondent.	U. S. District Court No. 82-2327-W (W.D. Okla.)
	Oklahoma District Court of Oklahoma County No. CJ-82-6456

Supreme Court, U.S.
FILED
NOV 21 1983
Alexander L. Stevas, Clerk

WILLIAM PAT POINTON and PATRICIA ANN POINTON, Petitioners	U. S. Supreme Court No. _____
v.	U. S. Court of Appeals No. 83-1352
FIDELITY BANK, NATIONAL ASSOCIATION, Respondent.	U. S. District Court No. 82-2326-W (W.D. Okla.)
	Oklahoma District Court of Oklahoma County No. CJ-82-5778

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

83-5830

The petitioners William Pat Pointon and Patricia Ann Pointon, asks leave to file Petitions for Writs of Certiorari to the United States Court of Appeals for the Tenth Circuit without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53.

The petitioners' affidavits in support of this motion are attached hereto.

William Pat Pointon

Patricia Ann Pointon

901 S. Anderson Rd.
Choctaw, Oklahoma 73020
(405) 769-6198

CERTIFICATE

I certify that on the 14 day of October, 1983, I mailed a copy of the aforementioned above to: Roland Tague, attorney for Fidelity Bank, N. A., Fidelity Bank Building, 901 Fidelity Bank Plaza, Oklahoma City, Okla.

William Pat Pointon

SUPREME COURT OF THE UNITED STATES

PATRICIA ANN POINTON, Petitioner,	)	U. S. Supreme Court No. _____
v.	)	U. S. Court of Appeals No. 83-1353
FIDELITY BANK, NATIONAL ASSOCIATION, Respondent.	)	U. S. District Court No. 82-2327-W (W.D. Okla.)
		Oklahoma District Court of Oklahoma County No. CJ-82-6456

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT IN FORMA PAUPERIS

I, Patricia Ann Pointon being first duly sworn, depose and say that I am a defendant, in the above-entitled case; that in support of my motion to proceed for a Writ of Certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on review are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the review are true.

1. I am not employed.

a. My previous employment for the past year amounted to $2,335.24.

2. I have no other income.

3. I do not own a checking or savings account.

4. My husband listed the autos on his Forma Pauperis Affidavit.

5. The persons dependent on me are as follows: Derrick D. Pointon, son, Laura J. Pointon, daughter, William Travis Pointon, son and my husband.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Do primarily to the exorbitant rates of interest charged by Respondent, We lost our business and had to take bankruptcy.

Patricia Ann Pointon

Patricia Ann Pointon
901 S. Anderson Rd.
Choctaw, Okla., 73020
(405) 769-3365

SUBSCRIBED AND SWORN TO before me this 16 day of November, 1983.

Carla Pickle
Notary Public

6-8-85
My Commission Expires:

Let the Applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Judge

CERTIFICATE OF SERVICE

I certify that on the 16 day of Nov., 1983, I mailed a copy of the aforementioned above to: Roland Tague, attorney for Fidelity Bank, N. A., 901 Fidelity Bank Plaza, Fidelity Bank Building, Oklahoma City, Oklahoma.

Patricia Ann Pointon
Patricia Ann Pointon

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM PAT POINTON, Petitioner,	U. S. Supreme Court No. _____
v.	U. S. Court of Appeals No. 83-1353
FIDELITY BANK, NATIONAL ASSOCIATION, Respondent.	U. S. District Court No. 82-2327-W (W.D. Okla.)
	Oklahoma District Court of Oklahoma County No. CJ-82-6456

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT IN FORMA PAUPERIS

I, William Pat Pointon being first duly sworn, depose and say that I am a defendant, in the above-entitled case; that in support of my motion to proceed for a Writ of Certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on review are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the review are true.

1. I am presently employed at Oklahoma Housing Corpation, 6400 South Shields Blvd., Oklahoma City, Oklahoma.

a. My salary consist of the legal minimum wage plus any commissions, in the pass year my income has been $10,172.72.

2. I have had no other income.

3. I do not own a checking or savings account.

4. I hold title to a 1982 Toyota Pickup with an indebtedness of $5,000.00 and a 1982 Volkswagon with an indebtedness of approximately $9,000.00.

a. The approximate value of these vehicles is the amount of indebtedness, $5,000.00 and $9,000.00 respectively.

5. The persons dependent on me are as follows: Tiffany D. Pointon, daughter, child support $200.00 per month, Derrick D. Pointon, son, Laura J. Pointon, daughter, William Travis Pointon, son and Patricia Ann Pointon, wife.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Do primarily to the exorbitant rates of interest charged by Respondent, I lost my business and had to take bankruptcy.

William Pat Pointon

William Pat Pointon
901 S. Anderson Rd.
Choctaw, Oklahoma, 73020
(405) 769-6198

SUBSCRIBED AND SWORN TO before me this 31 day of Oct, 1983.

Notary Public

My Commission Expires Oct 24 1984

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Judge

CERTIFICATE OF SERVICE

I certify that on the 1st day of Oct, 1983, I mailed a copy of the aforementioned above to: Roland Tague, attorney for Fidelity Bank, N. A., Fidelity Bank Building, 901 Fidelity Bank Plaza, Oklahoma City, Okla.

William Pat Pointon

William Pat Pointon

IN THE

SUPREME COURT OF THE UNITED STATES

RAYMOND J. DONOVAN, Secretary of Labor, U. S. Department of Labor, Plaintiff-Appellee, vs. W. P. POINTON, JR., an individual, Defendant-Appellant.	U. S. Supreme Court No. U. S. Court of Appeals (No. 81-2188) U. S. District Court (No. CIV-79-1034-D)

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SUPREME COURT, U.S.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that W. P. Pointon, Jr., the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on September 22, 1983.

William P. Pointon, Jr., Pro se
P. O. Box 10568
Midwest City, Okl., 73110
(405) 769-3365

AFFIDAVIT OF SERVICE

STATE OF OKLAHOMA
ss
COUNTY OF OKLAHOMA

I, William P. Pointon, Jr., depose and say that I am the appellant herein, and that, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Notice Of Appeal To The Supreme Court Of The United States on each of the parties required to be served herein, as follows:

James E. White, Ms. Mary-Helen Mautner, Ms Beate Bloch, Mr. T. Timothy Ryan, Jr., U. S. Dept. of Labor, 200 Constitutional Avenue, N. W., Room N-2716, Washington, D.C. 20210; U.S. Court Clerk, Herbert Hope, Clerk of the U.S. District Court for the Western District of Oklahoma, Federal Courthouse Building, Oklahoma City, Oklahoma; William P. Pointon, Jr., P. O. Box 10568, Midwest City, Oklahoma, 73110; and Claude V. Sumner, 7546.S.E. 15, Midwest City, Okla.

All parties required to be served have been served.

William P. Pointon, Jr.

Subscribed and sworn to before me on November 16, 1983.

My Commission Expires:
6-8-85

Carla Pickle
Notary Public

IN THE

SUPREME COURT OF THE UNITED STATES

RAYMOND J. DONOVAN, Secretary of Labor, U. S. Dept of Labor	)	U. S. Court of Appeals (No. 81-2188)
Plaintiff	)	U. S. District Court (No. CIV-79-1034-D)
vs.	)	
W. P. POINTON, JR., an individual,	)	
Defendant	)	

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SUPREME COURT, U.S.

Office of the Clerk
Supreme Court of U.S.
Washington, D.C. 20543

Dear Sir:

Enclosed please find: "NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

Very Truly,

William P. Pointon, Jr., Pro se

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

FIDELITY NATIONAL BANK, N.A.)	U. S. Supreme Court
)	No. _____
Plaintiff-Appellee)	
)	U. S. Court of Appeals
vs.)	No. 83-1352
)	
WILLIAM PAT POINTON,)	U. S. District Court
)	No. 82-2326-w
Defendant-Appellant,)	(W.D. Okla.)
	Oklahoma District Court
	of Oklahoma County
	No. CJ-82-5778

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that William Pat Pointon, the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on August 29th, 1983.

William Pat Pointon, Pro se
901 S. Anderson Rd.
Choctaw, Oklahoma, 73020
(405) 769-6198

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Notice Of Appeal To The United States Supreme Court, by mailing the same first class, postage pre-paid to: Roland Tague 901 Fidelity Bank Building, Oklahoma City, Oklahoma and to William Pat Pointon, 901 S. Anderson Rd. Choctaw, Okl. 73020. This 31st day of October, 1983.

William Pat Pointon

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

FIDELITY NATIONAL BANK, N. A.	U. S. Supreme Court No. _____
Plaintiff-Appellee	
vs.	U. S. Court of Appeals No. 83-1353
WILLIAM PAT POINTON,	U. S. District Court No. 82-2327-W (W D Ok.)
Defendant-Appellant,	Oklahoma District Court of Oklahoma County No. CJ-82-6456

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that William Pat Pointon, the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on August 29, 1983.

William Pat Pointon

William Pat Pointon, Pro se
901 S. Anderson Rd
Choctaw, Oklahoma, 73020
(405) 769-6198

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Notice Of Appeal To The United States Supreme Court, by mailing the same first class, postage pre-paid to: Roland Tague 901 Fidelity Bank Building, Oklahoma City, Oklahoma, and to William Pat Pointon, 901 S. Anderson Rd. Choctaw, Okl. 73020, and W. P. Pointon, Jr. P. O. Box 10568 Midwest City, Oklahoma 73110. This 31st day of October, 1983.

William Pat Pointon

William Pat Pointon

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
AUG 21 1984
HOWARD K. PHILLIPS
Clerk

FIDELITY BANK, NATIONAL ASSOCIATION, Plaintiff-Appellee, v. WILLIAM PAT POINTON, Defendant-Appellant, and PHEASANT RUN DEVELOPMENT CO., INC., an Oklahoma corporation, a/k/a Pheasant Run Development Company, Inc., Defendant-Appellant.	)	No. 83-1352 (D.C. No. 82-2326-W) (W.D. Okla.)
FIDELITY BANK, NATIONAL ASSOCIATION, Plaintiff-Appellee, v. WILLIAM PAT POINTON, a/k/a Wm. Pat Pointon, PATRICIA ANN POINTON, husband and wife, and W.P. POINTON, JR., Defendants-Appellants, WILLIAM PAT POINTON, d/b/a William Pat Pointon, Co., FIDELITY TRANSFER AND ESCROW COMPANY, an Oklahoma corporation, Defendants.	)	No. 83-1353 (D.C. No. 82-2327-W) (W.D. Okla.)

APPENDIX
PAGE 1
(1 of 1)

FIDELITY BANK, NATIONAL ASSOCIATION,

Plaintiff-Appellee,

v.

JOHN P. POINTON and WILLIAM PAT POINTON,

Defendants-Appellants,

and

W.P. POINTON, JR.,

Intervenor-Appellant,

HAROLD GENE BROWN and PATRICIA A. BROWN,

Defendants.

No. 83-1354
(D.C. No. 82-2328-W)
(W.D. Okla.)

ORDER AND JUDGMENT

Before BARRETT, McKAY and LOGAN, Circuit Judges.

In accordance with 10th Cir. R. 9(e) and Fed.R.App.P. 34(a), these appeals came on for consideration on the briefs and records on appeal.

83-1354, Fidelity Bank v. Pointon

This is an appeal from an order of the district court granting plaintiff's motion to dismiss defendants' petition for removal.

From the record this court concludes that the district court correctly found that defendants' petition for removal was untimely pursuant to 28 U.S.C. § 1446(b) and that no action was pending under 28 U.S.C. § 1446(b) when defendants filed their

petition for removal. A case may not be removed from state to federal court after the state court enters a judgment that terminates the litigation. Ristuccia v. Adams, 406 F.2d 1257 (9th Cir.), cert. denied, 396 U.S. 1 (1969).

Accordingly, the order of the district court granting plaintiff's motion to dismiss defendants' petition for removal is affirmed.

83-1352, 83-1353, Fidelity Bank v. Pointon

These are appeals from separate orders of the district court granting plaintiff's motions to remand to state court. Remand orders are not reviewable on appeal or otherwise when issued on grounds authorized by 28 U.S.C. § 1447(c). Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336 (1976); Volvo of America Corp. v. Schwarzer, 429 U.S. 1331 (1976). We conclude that the district court remanded these cases on grounds enumerated in 28 U.S.C. § 1447(c). As a result, this court is without jurisdiction to review those orders.

Moreover, the defendants' assertion of 28 U.S.C. § 1443 as an alternate removal basis and as an exception to the no-review provision of § 1447(d) is frivolous and completely without substance. Defendants fail to allege denial of rights arising under federal law providing for specific civil rights stated in terms of racial equality. Secondly, the defendants do not appear to be denied such rights or their enforcement in state court. These standards for removal set forth in Johnson v. Mississippi, 421 U.S. 213 (1975), are not met. When the removal so totally fails to fall within the Johnson test, the

(3 pages)

appeal should be dismissed. Robertson v. Ball, 534 F.2d 63 (5th Cir. 1976).

Accordingly, the appeals in No. 83-1352 and No. 83-1353 challenging the district court's remand orders are dismissed for lack of jurisdiction.

The judgment of the United States District Court for the Western District of Oklahoma in No. 83-1354 is AFFIRMED. See 10th Cir. R. 17(b).

The appeals in Nos. 83-1352 and 83-1353 are DISMISSED. See 10th Cir. R. 17(b).

The mandates shall issue forthwith.

Howard K. Phillips

HOWARD K. PHILLIPS, Clerk

(4 g Pgs 1)

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

FIDELITY BANK, N.A.

Plaintiff,

vs.

WILLIAM PAT POINTON a/k/a Wm. Pat Pointon, and PATRICIA ANN POINTON, husband and wife, WILLIAM PAT POINTON d/b/a William Pat Pointon Co., FIDELITY TRANSFER AND ESCROW COMPANY, an Oklahoma corporation, and W. P. POINTON, JR.,

Defendants.

CIV-82-2327-W
(State Court No. CJ-82-6456,
(District Court of Oklahoma
(County

FILED

Clerk, U.S. District Court
By: Robert P. Denn, Deputy

ORDER

This action was originally brought in the District Court of Oklahoma County, Oklahoma, by the plaintiff, Fidelity Bank, N.A., against the defendants, William Pat Pointon, Patricia Ann Pointon, William Pat Pointon d/b/a William Pat Pointon Co., Fidelity Transfer and Escrow Company, and W. P. Pointon, Jr., and removed to this Court by the defendant, William Pat Pointon. The matter now comes before the Court upon the plaintiff's motion to remand the action to state Court. The plaintiff has submitted a brief and has advanced three grounds supporting the requested removal.

Defendant Pointon has responded in opposition and the Court, upon consideration of the submission and without

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(1 of 2)

addressing either the merits of the plaintiff's claim or the merits of the defendant's defenses and counterclaims, finds that the plaintiff's argument regarding the court's jurisdiction is dispositive of the action and thus that it need not consider the plaintiff's arguments regarding co-defendants' failure to join in the petition for removal and defendant Pointon's failure to post bond.

The plaintiff, a national banking association, entered into a loan agreement with the defendants, William Pat Pointon and Patricia Ann Pointon. On February 25, 1981, these defendants borrowed $127,272.58 from the plaintiff and executed a promissory note and mortgage wherein all of their right, title, and interest in and to certain real property located in Oklahoma City, Oklahoma, was pledged as security for the loan. The filing of the instant lawsuit in state court was prompted by the defendants' alleged failure to pay the note when it became due.

The defendant has argued that jurisdiction is proper in this Court based upon the plaintiff's status as a national banking association and based upon the defenses and counterclaims asserted by the defendants. State courts have concurrent jurisdiction with the federal courts of all actions by and against national banks. Furthermore, the right of removal is limited by the principle that defendants may remove only on the basis of the claims brought against them and not on the basis of counterclaims or defenses asserted

(2 of 3.2)

by them. E.g., 14 C. Wright & A. Miller, Federal Practice and Procedure § 3731, at 716-17 (1976). A review of the state court petition and the petition for removal filed by the plaintiff reveals that the matter is not removable under 28 U.S.C. § 1331 as there is no federal claim asserted by the plaintiff or under 28 U.S.C. § 1332 since the defendant has not alleged that diversity of citizenship exists between the parties. The Court also finds that this matter is not removable under 28 U.S.C. § 1443 which has been advanced by the defendant as an alternate basis authorizing removal.

Accordingly, the Court finds that it is without jurisdiction of the matter and thus, that the plaintiff's Motion to Remand to the District Court in and for Oklahoma County, State of Oklahoma, is hereby GRANTED.

IT IS SO ORDERED this 28th day of February, 1983.

LEE R. WEST
United States District Judge

ENTERED IN JUDGMENT DOCKET ON
2-28-83

(79/32)

IN THE DISTRICT COURT OF OKLAHOMA

STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA CITY, OKLA
NOV 8 1983
DAN GRAY, Court Clerk
By _____ DEPUTY

FIDELITY BANK, N.A.,

Plaintiff,

v. CJ-82-6456

WILLIAM PAT POINTON, a/k/a Wm. Pat Pointon, and PATRICIA ANN POINTON, husband and wife, WILLIAM PAT POINTON, d/b/a William Pat Pointon Co., FIDELITY TRANSFER AND ESCROW, an Oklahoma corporation, and W. P. POINTON, JR.,

Defendants.

OBJECTION TO MOTION TO ENTER CAUSE ON NON JURY DOCKET

COMES NOW defendant, William Pat Pointon, and shows to the Court that defendant objects to said Motion for the following reasons:

1. "Article 2 § 6. The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale denial, delay, or prejudice."

2. "Article 2 § 19. The right of Trial by jury shall be and remain inviolate, • • •"

3. "Article 7 § 15. In all jury trials the jury shall return a general verdict, • • •"

4. On July 28, 1983, the U. S. District Court granted a stay in the instant case and a "Notice Of Appeal To The Supreme Court of the United States", see exhibit "A", was mailed by certified mail on October 31, 1983, to the United States Supreme Court Clerk and recieved by the indication of returned receipt on November 2, 1983.

5. In view of the forgoing paragraph defendant asks this Court for an abatement of these proceedings until disposition is made by the United States Supreme Court in the case at bar.

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WHEREFORE, Defendant request that Plaintiff's Motion be denied and that the instant case be held in abatement until disposition has been made by the U. S. Supreme Court, or in the alternative this case be adjudicated according to the Articles of the Oklahoma State Constitution and the demand for jury trial prevail as stated in Defendants' Answer and Counterclaim of record.

William Pat Pointon, Pro se
901 S. Anderson Rd.
Choctaw, Okl. 73020
769-6198

CERTIFICATE OF MAILING

This is to certify that on the 9th day of November, 1983, a true copy of the above and foregoing was either mailed postage prepaid thereon or personally served upon the following: Roland Tague, 901 Fidelity Plaza, Fidelity bank Building Oklahoma City, Oklahoma.

William Pat Pointon

Copy. 3

Best Copy Available

Plaintiff-Appellee	U. S. Supreme Court No. _____
vs.	U. S. Court of Appeals No. 83-1491
WILLIAM PAT POINTON,	U. S. District Court No. CIV-82-1177-W (W.D. Okla.)
Defendant-Appellant.	Oklahoma District Court of Oklahoma County No. CJ-82-6456

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that William Pat Pointon, the defendant-appellant above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on August 1, 1983.

William Pat Pointon
William Pat Pointon, Pro Se
901 S. Anderson Rd
Choctaw, Oklahoma, 73020
(405) 769-6198

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Notice Of Appeal To The United States Supreme Court, by mailing the same first class, postage pre-paid to: Roland Tague 901 Fidelity Bank Building, Oklahoma City, Oklahoma, and to William Pat Pointon, 901 S. Anderson Rd. Choctaw, Okl. 73020, and W. P. Pointon, Jr. P. O. Box 10568, Midwest City, Oklahoma 73110. This 31st day of October, 1983.

William Pat Pointon
William Pat Pointon

Exhibit "6"

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

FIDELITY BANK, N. A. Plaintiff, vs. WILLIAM PAT POINTON a/d/a Wm. Pat Pointon, and PATRICIA ANN POINTON, husband and wife, WILLIAM PAT POINTON d/b/a William Pat Pointon Co., FIDELITY TRANSFER AND ESCROW COMPANY, an Oklahoma corporation, and W. P. POINTON, JR., Defendants.	CJ-82-6456

DEFENDANT'S FIRST SET OF INTERROGATORIES PROPOUNDED TO PLAINTIFF

To: Roland Tague
901 Fidelity Bank Plaza
Oklahoma City, Ok., 73102
236-5303
For
Fidelity Bank, N. A., its Officers, Representatives and Agents hereinafter referred to.

PURSUANT to 12 O.S.A. § 549, Defendant directs the following Interrogatories to the Fidelity Bank, N.A., and to each named or unnamed official or agent of said Plaintiff (hereinafter, the Bank) who is the most knowledgable person to answer the questions promulgated hereafter and for all questions to be answered under oath within twenty (20) days after the service of said interrogatories.

INTERROGATORY NO. 1. Please state full information:

a. The original amount of the first note covering this property before renewals.

b. The full amount of each succeeding note renewal.

c. The note discount from the face of the original note as origination fee.

d. A chart of information showing each interest change of calculation of each successive note and its renewal note from the first note to the note sued on and showing conclusively:

(1.) The legal rate of the Oklahoma consumer credit code or commercial code (both), that the bank based their interest rates on.

(2.) The Oklahoma legal

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(3 of 4)

rate of allowable interest charge for loans covering land.

(3.) The Oklahoma legal rate of allowable interest charge for consumer loans.

(4.) The Oklahoma legal rate allowable interest charge for housing loans.

(5.) The Oklahoma legal rate allowable interest charge for owner occuppied home loan.

e. A chart of information used by the bank showing each interest change of calculation, based on the 1980 Monetary Control Act where by said act provides pre-empting of state interest rates based on Federal Reserve Commercial paper in this district.

f. It is the intention of interrogatory No. 1, that Fidelity Bank show a complete chart of interest calculations for interest charged on each successive note from the first to the last note showing each change of calculation and by what authorization interest change and charge is based on.

INTERROGATORY NO. 2. Please state why the bank did not base its interest charge on the Balloon Note Provision (14A O.S.A. § 3-402) of the Oklahoma Consumer or Commercial Credit Code and took more interest then said provision allows.

INTERROGATORY NO. 3. Please state why the bank did not mail timely disclosures of "Semiannual Statements" as required under Regulation Z (Truth in Lending Act), 12 C.F.R. § 226,7 (d) and state of Oklahoma Truth-in Lending Laws; and, why the bank did not explain foreclosing proceedures at the inception of the first note as well as each renewal note.

INTERROGATORY NO. 4. State why the bank feels it has the legal right to commit usury in the chain of notes, which is an extention of one and the same note, in violation of 12 U.S.C.A. § 85 and 86.

INTERROGATORY NO. 5. State why the bank feels that it is not necessary that a debtor sign a valid waiver with his legal representative's approval of his constitutional rights as a debtor in the chain of Promissory notes concerning this action.

(29 89 4)

INTERROGATORY NO. 6. State why the bank is charging high rates of interest under authority of an ambiguous Oklahoma Constitution amendment.

INTERROGATORY NO. 7. Please state the bank's legality of charging interest on interest.

INTERROGATORY NO. 8. What is the Domicile address of the corporate charter of Fidelity Bank, N. A.?

INTERROGATORY NO. 9. State why the prime rates of the downtown Oklahoma City banks was the same in the past four years and corresponded with Fidelity's Prime rate.

William Pat Pointon

William Pat Pointon
Attorney Pro Se
P. O. Box 696 Choctaw, Ok., 73020
769-3365

CERTIFICATE OF SERVICE

I certify that on the 28th day of March, 1983, I mailed copy of the aforementioned above to:

Roland Tague
901 Fidelity Plaza
Okl. City, Okla., 73102

Denise Kreuger
Vice President
Fidelity Bank, N.A.
Fidelity Bank Building
Oklahoma City, Okla.

William Pat Pointon

(3 of 4)